

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 759 OF 1994.

1. Shri Vishwas Vinayak Chitrao

2. Mrs. Pradnya Vishwas Chitrao

Both residing at 1206-A/45, Jangli
Maharaj Road, Pune-411 004 ..Petitioners.

V/s

1. Bhartiya Charitra Kosh Mandal

2. The State of Maharashtra ..Respondents.

Mr. S.R. Chitnis for the petitioners.

Mr. P.P. Hudlikar with Mr.D.B.Lonkar for respondent
No.1.

Mr.P.S. Hingorani, A.P.P. for the State.

CORAM : S.C. DHARMADHIKARI, J.

DATE : 15TH & 22ND SEPTEMBER, 2006.

ORAL JUDGMENT

. This Writ Petition under Article 227 of the constitution of India read with Section 482 of Criminal Procedure Code challenges the order dated 17th April, 1994, passed by the Additional Sessions Judge, Pune, in Criminal Revision Application 153/1994, as also the

order of the Sub-Divisional Magistrate, Pune City Sub-Division, Pune in case No. 8/1993, dated 29/1/1994.

2. It is not in dispute that these orders are passed during the course of proceedings under Section 145 of Code of Criminal Procedure, 1973.

3. The petitioners are husband and wife. The first respondent is a Trust registered under the Bombay Public Trust Act, 1950. The Trust is represented by the deceased father of the petitioner No.1. The Trust had filed a complaint at Deccan Gymkhana Police Station, which was registered at C.R.No. 275/1993 alleging offences under section 452, 454, 341 and 427 of Indian Penal Code. This complaint was filed on 9th April, 1993. This complaint was sent to the Judicial Magistrate, First Class, In-charge Anti Corruption Court, Pune on 17th May, 1993.

4. During the pendency of this complaint and proceedings in pursuance thereof, the first respondent filed an application on 11th May, 1993, praying therein that the possession of the three rooms was with the father of the petitioner No.1 and stating that the

premises more particularly described in paras 2 and 4 of the present petition have been taken charge by the petitioners. The first respondent's application appears to have been rejected as being not tenable.

5. In so far as the aforesaid C.R. is concerned, the petitioners have been protected by an order of Anticipatory Bail.

6. The plea of the petitioners is that having failed to obtain possession of three rooms on the second floor of the said building, on 21st June, 1993, an application was filed by the first respondent-trust. The prayers in the said application are that three rooms on the second floor be restored to the possession of the said Trust and the appellants be directed accordingly. Second prayer according to the petitioners in the said application was that pending the hearing and final disposal of the application under Section 145, three rooms on the second floor which were allegedly, illegally occupied by the petitioners be sealed, with a view to protect the furniture therein.

7. Thus, the grievance is that the application

dated 21st June, 1993 (Annexure "C") is invoking the powers of the authorities under section 145 of Cr.P.C. with regard to possession of three rooms on the second floor of the building.

8. I am not concerned with the proceedings pertaining to the sealing of the premises because it is an admitted position that the order of sealing of the said premises has subsequently been set aside by this Court. All that is remaining for my consideration is the proceeding under section 145(1) of Cr.P.C. and the out come of an application made under sub-section (5) of section 145 of Cr.P.C., by the petitioners herein. This being the position, I need not refer to the other events which are set out in the petition.

9. The grievance of the petitioners principally is that upon an application made under section 145(1) of Cr.P.C., the learned Sub-Divisional Magistrate issued a notice and after the petitioners' filed their reply ultimately, Sub-Divisional Magistrate passed an order on 6th July, 1993. It is contended that this is an order purporting to be one made under section 145(1) of the Cr.P.C.

10. Mr. Chitnis, learned Senior Counsel appearing for the petitioners, submits that the first respondent is a Trust registered under the Bombay Public Trust Act, 1950. However, in so far as the trust properties are concerned, the Trust purported to file a change report. In the change report, the father of the petitioner No. 1 had pointed out that the portion which is in possession of the present petitioners was leased to the first respondent Trust. In such circumstances and noting certain other events, a change report was filed by him. This change report was filed after C.R.No. 275/1993 was registered by the Deccan Gymkhana Police Station. Prior thereto, the first respondent Managing Trustee viz. deceased father had tried to move furniture items allegedly belonging to the Trust into the second floor portion, which is in possession of the first petitioner and that move was resisted by the petitioners. Therefore, after the complaint was filed, the father proceeded to institute a change report before the Assistant Charity Commissioner. That change report is dated 11th June, 1993. On 21st June, 1993 he moved an application under section 145 as also 146 of Cr.P.C. against the first petitioner. Thereafter, on 24th June,

1993, Change Report No. 853/1993 was filed before the Assistant Charity Commissioner by the deceased father in the capacity of Managing Trustee of the respondent Trust and once this change report was filed the Managing Trustee withdrew the earlier change report dated 11th June, 1993. On 6th of July, 1993 the SDM, Pune passed an order to issue process under section 145(1) of Cr.P.C. Mr. Chitnis's submits that the Managing Trustee has filed change report earlier and thereafter, moved the application under section 145 of Cr.P.C. He submits that within two days of filing of the application under section 145 of Cr.P.C., he withdraws the earlier change report and files a fresh change report. It is thereafter, SDM has passed an order to issue process. There is no apprehension of breach of peace. His submission is that the very foundation of proceedings under section 145 of Cr.P.C. is that there must be a dispute which would create genuine apprehension of breach of peace. No such apprehension exists or is made out and therefore, the order passed by the SDM is patently unsustainable.

11. It is in these circumstances, that an application was filed under Section 145 (5) of the

CR.P.C. by the petitioners praying that proceedings initiated by the first respondent be stayed as no dispute exists or existed. Mr. Chitnis submits that sub section (5) of Section 145 Cr.P.C. empowers a Magistrate to cancel his order and thereafter stay all proceedings in furtherance of the order sub-section (1) of Section 145 Cr.P.C. It is this power which was invoked by filing an application before the SDM. Mr. Chitnis has taken me through the contents of that application and the order passed on 29/1/1994 (Annexure "S"). Mr. Chitnis submits that the learned Sub-Divisional Magistrate was in complete error in as much as this application of the petitioners could not have been rejected on the spacious plea that the SDM was satisfied that dispute existed and apprehension of breach of peace was also made out. He submits that neither at the initial stage nor at the stage when the application under section 145(5) Cr.P.C. was filed by the petitioners any dispute existed nor is there any apprehension of breach of peace.

12. Mr.Chitnis submits that the observations of the learned SDM that when both parties take a contradictory stand it shows that there is a dispute and hence, the

provisions of section 145(5) Cr.P.C. do not come into picture are patently erroneous, unsustainable and defeats the very purpose and object for which this provision has been enacted in Cr.P.C. In substance, his submission is that SDM erred in law in rejecting the application of the petitioners and directing that proceedings under section 145 Cr.P.C. be continued.

13. Mr. Chitnis then submits that even the learned Sessions Judge before whom the petitioners filed Criminal Revision Application No. 153/1994 to challenge the order of the SDM, Pune has committed the same error. His order is vitiated by total non application of mind and is patently unsustainable.

14. The submission of Shri Chitnis is that the learned Sessions Judge ought to have taken cognizance of the submissions of the petitioners that the order dated 19th January, 1994 is vitiated and has serious consequences. The prayer of the petitioners was for cancellation of the order under section 145(1) and stay of further proceedings. When such is the nature of the prayer and ambit and scope of the powers of the Magistrate being provided by section 145(5) Cr.P.C.,

then the order of the learned Sessions Judge holding that the Magistrate's finding and ultimate conclusion are interlocutory in nature is contrary to the very scheme of section 145 of Cr.P.C. Such orders cannot be said to be interlocutory but having serious consequences and deciding certain rights of the parties. When prayer is made to stay further proceedings and that prayer is refused then, in so far as the application under section 145(5) Cr.P.C. is concerned, such an order is a final order and cannot be termed as inter-locutory. Hence, the revision application was clearly maintainable. That apart, if the application was not maintainable, then, there was no occasion for the learned Sessions Judge to have made observations to this effect that it is not necessary that there should be breach of peace when an order under section 145 (1) is passed. This observation means that the learned Sessions Judge has gone into the merits of the controversy as well. Looked at from any angle, the orders under challenge are vitiated by non application of mind and perverse and deserve to be quashed and set aside.

15. Mr. Chitnis has also referred to the subsequent developments in as much as he has invited my attention

to the observations of the Deputy Charity Commissioner, Pune Region, Pune in the change report proceeding. The order dated 22nd November, 2001, according to Shri Chitnis puts an end to the controversy in as much as the said order holds that the trust does not have any right, title or interest in the property. The property could not have been dedicated to the Trust by the father of the petitioner No.1. The property was an ancestral property. Such being the position and the petitioner No.1 being the son, as a co-parcenary, he had certain rights therein. Therefore, these developments justify the stay of further proceeding under section 145 of the Cr.P.C.

16. In support of his submissions Shri Chitnis has relied upon a decision of this Court, reported in **1980 Mah. L.J. 372 (Jagatnarayansingh Swarupsingh Chithere and others V. Swarupsingh Education Society and another)**. He has also relied upon the decision of the Supreme Court reported in **AIR 1968 SC 1444 (R.H. Bhutani V. Miss Man J. Desai and others)** and **AIR 1985 472 (Ram Sumer Puri Mahant V. State of U.P.)**.

17. On the other hand, Shri Hudlikar. appearing for

the first respondent has submitted that the Court below has committed no error in refusing to take cognizance of the petitioners request of staying further proceedings and cancelling the order under sub-section (1) of Section 145. He submits that in proceedings under Section 145 the authorities are not concerned with the right, title and interest in immovable property. All that the authorities are concerned, is a dispute with regard to possession of the same. It is well settled that such proceedings do not decide other rights in the property. He has invited my attention to sub-section (1) of Section 145 and has contended that the Executive Magistrate has to be satisfied from a report of a Police Officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land etc. and thereupon he shall make an order in writing stating the grounds that he is so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specific date and time. Mr. Hudlikar emphasises the words "parties have to put in written statements of their respective claims as regards the actual possession of the subject property" appearing in Section 145(1) Cr.P.C.

18. Mr. Hudlikar submits that no case is made out for quashing of the proceedings because the application filed by the first respondent clearly shows that a dispute likely to cause a breach of peace existed with regard to the subject premises. The learned SDM is in no error while refusing to take cognizance of the application preferred by the petitioners under sub-section (5) of Section 145 of the Code. Mr. Hudlikar submits that the petitioners have not filed any civil suit to assert their right, title and interest in the properties. Admittedly, no such proceedings are taken even during the pendency of the present petition by them. In his submission, assuming that revision application was maintainable, yet, no case was made out for setting aside the order of the Magistrate".

19. For all these reasons, he submits that the present petition for quashing of the proceedings be dismissed.

20. For properly appreciating the rival contentions, it would be necessary to refer to the contents of the application which was preferred by the first respondent.

The first respondent had admittedly invoked the jurisdiction of the Sub-Divisional Magistrate, Division Pune by filing an application on 21st June, 1993 (Annexure "C").

21. In this application the first respondent has stated thus:-

"The applicant under signed is working as Secretary and Managing Trustee of the above-mentioned trust since the inception of the Trust i.e. 31.1.1958."

"The House at CTS No. 1206/A/45 is personally owned by me. This is a three -storeyed house where two rooms facing east out of five rooms situated on the ground floor, and two rooms facing east and one room facing north situated on the second floor, and two garages on the backside, have been leased to Bharatiya Charitrakosh Mandal vide Lease Deed dated 27.7.91 for a period of five years, for their office, Library and Godown. A true copy of this lease deed is appended to this Application as Exhibite-3."

"I myself stay in the three rooms situated on the ground floor of the house at CTS No. 1206/A/45, Jangali Maharaj Road, pune, the other two rooms on the ground floor being leased out to Bharatiya Charitrakosh Mandal. On the second floor, except for the three rooms leased out to Bharatiya Charitrakosh Mandal, the other two rooms have been temporarily given by me for purpose of residence, to my son Vishwas Vinayak Chitrao and daughter-in-law Pradnya Vishwas Chitrarao."

"Even when the situation was a described in para 4 above (1) My son Vishwas Vinayak Chitrao and

(2) My daughter-in-law Pradnya Vishwas Chitrao, on 7.5.1993 at 10.00 AM. broke open nine locks on the three rooms situated on second floor of House No. 1206/A/45, Jangali Maharaj Road, Pune which were leased out to Bharatiya Charitrakosh Mandal and with which the respondents had no connection whatsoever, and obtained possession of these rooms, and prevented the Secretary and Managing Trustee of the Applicant Trust from entering his office on the second floor, and threw away the belongings of the trust.

22. A reading of these paras would indicate that the first respondent-applicant contended that the house CTS No. 1206/A/45 situated at Jangali Maharaj Road, Pune is owned by Managing Trustee. It is a three storeyed house where two rooms are facing east, out of 5 rooms situate on the ground floor and 2 rooms facing east and one room facing North, situate on the second floor along with two garages at the back side have been leased to the first respondent Trust under a lease deed dated 24/7/1991 for a period of 5 years for their office, library and godown. The Managing Trustee stays in the three rooms situate on the ground floor. The other two rooms on ground floor are leased/let out to the Trust. On the second floor except three rooms let out to the Trust, there are other two rooms which have been given by him for the purpose of residence to his son, the petitioner No.1 and daughter-in-law petitioner No.2.

23. However, on 7th May, 1993 at about 10 a.m. the petitioners broke open 9 locks on the 3 rooms situate on the second floor which are leased out to the first respondent Trust and with which the respondents had no connection whatsoever. They took possession of these rooms and prevented the Secretary and Managing Trustees from entering the office of the trust on the second floor. They threw away the belongings of the Trust. There is a reference made to the complaint of Criminal Trespass and the FIR. There is also a reference to the complaint made to the Charity Commissioner, Pune Region, Pune, so also to the Deputy Commissioner, Zone I by the Superintendent/Trust Registration Office, Pune.

24. Thus, the case of the first respondent is that his son and daughter-in-law have broken open 9 locks and took forcible possession of the premises, described in the application. It is in these circumstances, he requested that proceedings under section 145 of Cr. P.C. be commenced and appropriate orders directing restoration of possession of the first respondent be passed.

25. On the receipt of this application a notice was issued by SDM, Pune on 28th June, 1993 calling upon the petitioners to file their say to the application preferred by the first respondent.

26. Accordingly, the petitioners filed their reply which is at annexure "G" page 42. It is the contention of the petitioners that the Trust is not a tenant in respect of three rooms and that there was no dispossession as alleged. On the other hand, the property is an ancestral property, wherein respondent No.1 has undivided right, title and interest and the petitioners have been occupying all 5 rooms on the top floor as owners. That the Trust was in possession of the premises was also denied. They denied the admissibility of the lease deed because the same was unregistered. It was also pointed out that there is no necessity of holding any proceeding under Section 145 of Cr.P.C. because the ingredients of Sub-Section (1) of Section 145 are not satisfied in this case. It was contended that there is no likelihood of breach of peace. There was never any quarrel between the parties. There was no obstruction caused to the first respondent in any manner. The so called apprehension that there

will be a breach of piece, is not well founded. On the other hand, it was asserted that parties are related to each other and therefore, no intervention of the police was necessary. The SDM has passed an order on this application and it is an order under section 145(1) of Cr.P.C. In this order, the SDM has referred to the report dated 3rd July, 1993 of the Police Inspector, Deccan Gymkhana Police Station. He has observed that the Police Inspector has reported that the petitioner No.1 has taken forcible possession of the three rooms on 7th May, 1993 without knowledge of the Managing Trustee. There is every possibility of breach of peace in respect of the disputed rooms.

27. Thereafter, the SDM has referred to the say of the petitioners and has observed that, if process under section 145 of Cr.P.C. is not issued then there is a possibility of breach of peace. The parties cannot be allowed to take law in their hands and this is a fit case, therefore, to initiate and commence proceedings under Section 145 of Cr.P.C.

28. In the meanwhile, an order was passed to seal the three rooms. The order of sealing the premises was

ultimately set aside by this Court in a writ petition, which was preferred by the petitioners, being Criminal Writ Petition No. 986/1993. The first respondent challenged that order in Supreme Court but the Special Leave Petition was dismissed with a direction that the main proceedings under Section 145 be disposed of as expeditiously as possible.

29. The petitioners thereafter, preferred an application under Section 145(5) of Cr.P.C. In the application the petitioners have referred to the investigation carried out by the Deccan Gymkhana Police station. It was alleged by the petitioners that the Deccan Gymkhana Police Station came to a conclusion that there is no substance in the complaint lodged by the first respondent. The police authorities closed the case, holding that the complaint is false, on 4th November, 1993. The proceedings under section 145 are based upon the complaint lodged by the first respondent against the petitioners. Since, the complaint has been found to be false and frivolous, there is no point in continuing the proceedings. The proceedings are being initiated only to harass the petitioners. The Police authorities have made a thorough enquiry and have

recorded the above conclusion. The petitioners therefore, prayed that the proceedings initiated under section 145 be dropped. This application was filed on 7th December, 1993.

30. To this application, the first respondent filed a written statement and apart from denying the contents of the application preferred by the petitioners, the first respondent contended thus:-

"It is submitted that police report regarding closure of our case on 31.8.1993, contained in the letter No. 5647/993 dated 21.11.1993 of P.I., Deccan Gymkhana Police Station, refers to F.I.R. filed by the Applicant, as far back on 09.05.1993, and as such, does not cover later developments in the case."

"It is further submitted that diametrically opposite and contradictory police report regarding apprehension of breach of peace has been submitted to this Hon'ble Court by Prabhat Road Police Chowky, vide Reports No. 3308/93 and 3453/93 dated 03.07.1993 and 13.07.1993 respectively (copies of S.I. Reports enclosed).

"Moreover as seen from the fresh complaint dated 14.12.1993, addressed to Deputy Police Commissioner, Zone-1, Poona (copy enclosed) the applicants are till today receiving repeated fresh threats in person and on phone, for withdrawing the present complaint in this Hon'ble Court, and threatening us dire consequences in case of our failure to do so."

31. In this written statement filed on 23rd

December, 1993 the first respondent prayed that contradictory police reports having been filed, the proceedings under section 145 of Cr.P. C. be continued and appropriate orders in accordance with law be passed thereon.

32. It is pertinent to note that the learned Sub-Divisional Magistrate has observed in his order dated 29th January, 1994 that at the initial stage he was satisfied that the dispute exists, so also that there is apprehension of breach of peace. The learned Magistrate has also noted the fact this aspect is disputed by other party. He observed that when both parties take contradictory stands and there is no end to the dispute, then, even if, there may not be apprehension of breach of peace, the provisions of section 145(5) do not come into picture. The proceedings will have to be completed and a decision in accordance of sub-Section (6) of Section 145 will have to be passed. That apart, the learned S.D.M has observed that party No.2 viz. petitioner before me could not produce any material except police report to show that the dispute does not exist. It is in these circumstances, that he has proceeded to reject the

application preferred by the petitioner.

33. Section 145 (5) of the Code of Criminal Procedure reads as under:-

"Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final"

34. A bare perusal of this section will show that nothing in section 145 shall preclude any party so required to attend or any other person interested from showing that no such dispute as aforesaid exists or has existed. In other words, an order having been passed under section 145 (1) of Code, this provision enables any party who is required to attend or any other person interested from showing that no dispute as stated in the preliminary order exists or has existed. It is only after such material is produced that the Magistrate can cancel the order passed under section 145(1), so also stay further proceedings. However, it is clarified that subject to such cancellation, the order of Magistrate

under sub-section (1) shall be final.

35. The order under sub-section (1) of Section 145 was passed on 6/7/1993. At that stage the SDM has observed, that if proceedings under section 145 are not taken up, there is a possibility of breach of peace. This finding is recorded by him after he has adverted to an application filed before him by the first respondent. In that application a specific statement was made that Lease Deed was executed in favour of the trust on 24/7/1991 for a period of 5 years. Thus, the subject premises were covered by this lease and it was urged that Trust was put in possession. The petitioners were not in possession of the portion which was leased to the Trust and excepting this and the portion in occupation of the father of the petitioner No.1 and his stepmother, petitioners were allowed to use and occupy part of the Building. The specific plea was that two rooms have been temporarily given for residence of the petitioner and his wife. Thereafter, it is alleged that on 7th May, 1993 the petitioner broke upon 9 locks of the three rooms situate on the second floor viz. premises which were leased to the trust and obtained possession of the same. He prevented the Secretary and Managing Trustee

from entering the office and threw away the belongings of the Trust. It is in such circumstances, that the preliminary order was passed. The learned SDM has satisfied himself and thereafter issued the preliminary order. When the premises were sealed and that action was subject matter of challenge in a writ petition before this Court at the instant of the present petitioner, this Court directed removal of the seal. The matter was carried by the first respondent to the Supreme Court and the Supreme Court directed that the main matter should be expedited. It is thereafter, that an application is filed invoking the powers under Section 145 (5) of Cr.P.C. as above. Reliance was placed upon the report of the Police Authorities which purportedly closed the case. The plea appears to be that the application preferred by the first respondent is false and frivolous. The sole intention is to harass the petitioner. Thus apart from relying upon police report of 4th November, 1993, no material was produced by the petitioner. That apart, the first respondent through its Managing Trustee pointed out that two police stations have submitted contradictory opposite reports. In such circumstances, the apprehension still persists and this is a case, where it cannot be said that the

dispute is not existing at all. It is on the basis of these pleas that the SDM has refused to stay the proceedings.

36. The Revisional Court apart from holding that the revision is not maintainable, has noted the pleas of both sides on the dispute itself.

37. In my view, the petitioner has not made out any case, for dropping of the proceedings or cancellation of the preliminary order. The SDM having satisfied himself on the earlier occasion as also at the subsequent stage, on the basis of materials which were brought to his notice, then, his conclusion that the proceeding cannot be dropped and the preliminary order is not liable to be cancelled is not capable of interference in writ jurisdiction. Ultimately, it would be open for the petitioners to raise all pleas and it is not as if the application preferred by them having been rejected, they have no remedy. The SDM having perused the report which is the only material relied upon by the petitioner, was in no error in concluding that a case under section 145 (5) is not made out.

38. It is not necessary to refer to the ambit and scope of the powers conferred upon the SDM. The SDM has referred to a Judgment of Hon'ble Supreme Court reported in AIR 1981 S.C. Pg. 18 (Rajpati V. Bachan and another). That Judgment refers to the earlier decision reported in AIR 1968 S.C. 1444 (R.H. Bhutani V. Miss Man. J. Desai and others). It is this earlier decision which is pressed into service by Shri Chitnis. However, in the later decision the Hon'ble Supreme Court has referred to this decision so also the provisions. This is what Supreme Court has observed:-

"The object of section 145, no doubt is to prevent breach of peace and for that end to prove a speedy remedy by bringing the parties before the Court and ascertaining who of them was in actual possession and to maintain status quo until their rights are determined by a competent Court. The section requires that the Magistrate must be satisfied before initiating proceedings that a dispute regarding an immovable property exists and that such dispute is likely to cause breach of peace. But once he is satisfied of these two conditions, the section requires him to pass a preliminary order under sub-section (1) and thereafter to make an enquiry under sub-section (4) and pass a final order under sub-section (8). It is not necessary that at the time of passing the final order the apprehension of breach of peace should continue or exist. The enquiry under Section 145 is limited to the question as to who was in actual possession on that date of the preliminary order irrespective of the rights of

the parties. Under the Second proviso, the party who is found to have been forcibly and wrongfully dispossessed within two months next preceding the date of the preliminary order may for the purpose of the enquiry be deemed to have been in possession on the date of that order. The opposite party may of course prove that dispossession took place more than two months next preceding the date of that order and in that case the Magistrate would have to cancel his preliminary order. On the other hand, if he is satisfied that dispossession was both forcible and wrongful and took place within the prescribed period, the party dispossessed would be deemed to be in actual possession on the date of the preliminary order and the Magistrate would then proceed to make his final order directing the dispossessor to restore possession and prohibit him from interfering with that possession until the applicant is evicted in due course of law. This is broadly the scheme of section 145."

39. In my view, the SDM having satisfied himself that a dispute likely to cause breach of peace is existing and he has made an order stating the grounds of his satisfaction and required the concerned parties to put in statements with regard to the respective claims on the factum of actual possession and the petitioners having not produced any further material but relied on the same pleas which have been earlier noted, they cannot seek an order of cancellation and stay of further proceedings. The SDM has after perusal of the application, the written statement and annexures thereto

recorded a finding of fact to the effect that no case is made out for cancellation of his earlier order or staying further proceedings. Such findings cannot be said to be perverse or otherwise vitiated so as to call for any interference in the writ jurisdiction of this Court or its inherent powers conferred vide Section 482 Cr.P.C.

40. Reliance by Shri Chitnis on the observations of the Deputy Charity Commissioner while deciding the change report are of no assistance. Ultimately, it is the factum of possession, which is required to be gone into. Larger issues including the issue of title are not subject matter of the present proceeding. The Authorities under the Bombay Public Trust Act would go into the legality, as also validity of the change report. However, there is nothing in the provisions much less section 22 of the Bombay Public Trust Act which would prevent initiation of proceedings under section 145 of Cr P.C. The area and field covered by the two provisions is distinct. Therefore, neither are the orders under B.P.T. Act relevant nor any assistance can be derived from a decision of this Court reported in 1980 MLJ 372. That Judgment discusses the ambit and

scope of provisions regarding enquiries into Change Reports submitted to the authorities exercising powers under Bombay Public Trust Act,, 1950. That apart, as rightly pointed out by Shri Hudlikar an Appeal against the decision of the Deputy Charity Commissioner is pending. Therefore, I need not refer to the findings of the Deputy Charity Commissioner.

41. Similarly, the Judgment of the Hon'ble Supreme Court reported in AIR 1985 S.C. 472 is also of no assistance. Ultimately, whether the proceedings under section 145 should be continued parallel to civil proceedings or not is something which must be decided in the facts and circumstances of each case. No general rule can be laid down in such cases. In the case before me, the petitioners have not filed any civil proceeding. The civil proceeding as contemplated in the decision relied upon by Shri Chitnis is a civil suit I need not go into the larger issue as to whether proceeding under section 22 of the Bombay Public Trust Act or any enquiry thereunder can be said to be a civil proceeding in the sense, contemplated by the decision of the Supreme Court. Ordinarily, the Supreme Court while referring to civil proceeding means a civil suit where issues of

title and possession are both involved. That is not the case before me, as admittedly, the petitioners have not filed any civil suit. In the above circumstances, I am of the view, that the findings of the fact recorded by Sub-Divisional Magistrate are not liable to be interfered with in the limited jurisdiction conferred upon this Court. The petition therefore fails. Rule is discharged. Interim order to stand vacated forthwith.

(S.C.DHARMADHIKARI, J.)